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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/177,047	10/22/1998	KENNETH L. BRINKLEY		2616

7590 06/12/2008
FROST & JACOBS
2500 PNC CENTER
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CINCINNATI, OH 45202

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/177,047	Applicant(s) BRINKLEY, KENNETH L.	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27, 29, 31, 34, 35, 40, 41 and 63-66 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27, 29, 31, 34, 35, 40, 41, 64 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22, 26, 63 and 66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 22-27, 29, 31, 34, 35, 40, 41 and 63-66 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3641

1. Claims 23-25, 27, 29, 31, 34-35, 40-41, and 64-65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 23-25, 27, 29, 31, 34-35, 40-41, and 64-65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 1-21 of patent 5,566,486 is directed to the a firearm monitoring device in combination with a firearm (see claims 1 and 14). Claims 23-25, 27, 29, 31, 34-35, 40-41, and 64-65 as now presented are directed to a monitoring device or firearm monitoring device independent of a firearm. As such these claims are directed to the subcombination Bsp (see claims 23, 27, and 29) when the claims as originally presented (claims 1-21 of patent 5,566,486) are directed to the combination ABbr (see claims 1 or 14 of patent 5,566,486).

Since applicant has received an action on the merits for the originally presented invention during the prosecution of U.S. Patent application 08/273,648, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, claims 23-25, 27, 29, 31, 34-35, 40-41, and 64-65 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Claims 22 and 63 link(s) inventions I (combination of firearm and monitoring device) and II (monitoring device). The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claim(s), claims 22 and 63. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the

Art Unit: 3641

allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 26 and 66 directed to the invention elected by original presentation will be examined in conjunction with claims 22 and 63 directed to claims linking inventions I and II.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 22, 26, 63, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al. (564).

Allen et al. (564) disclose a firearm monitoring device comprising:

a) an inertia sensor;

81; col. 2, lines 40-43;

col. 8, lines 54-62

- b) generates a first signal in response to target contact or firearm discharge; 82, 83, 86, 89
- c) generating a second signal indicative of the number of firearm discharges; col. 9, lines 14-19
- d) ignores any signals generated within a time period after the first signal; and col. 9, line 59-
col. 10, line 2
- e) in combination with a firearm. col. 1, lines 5-10

5. Claims 22, 26, 63, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Busch (299).

Busch (299) discloses a firearm monitoring device comprising:

- a) an inertia sensor; 30, 40; col. 2, lines 23-29
- b) generates a first signal in response to target contact or firearm discharge; 80, 85, 95
- c) generating a second signal indicative of the number of firearm discharges; 150, 184, 60
- d) ignores any signals generated within a time period after the first signal; and col. 4, lines 28-58
- e) in combination with a firearm. col. 1, lines 4-8

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

/Stephen M. Johnson/
Primary Examiner, Art Unit 3641

SMJ
June 8, 2008